

# CALIFORNIA DEPARTMENT OF INSURANCE

## TOTAL DISABILITY DEFINITION IN STANDARD CREDIT POLICY FORMS REGULATIONS

### **NOTICE OF PROPOSED REGULATORY ACTION**

**DATE:** December 14, 2007

**REGULATION FILE:** REG-2007-00030

### **SUBJECT OF PROPOSED RULEMAKING**

The Insurance Commissioner proposes to amend the regulations described below after considering comments from the public. The Commissioner proposes to make revisions in the California Code of Regulations, Title 10, Chapter 5, Subchapter 2, Article 6.9, pertaining to credit disability insurance on revolving accounts and on loans of ten years duration or less, which is sold in connection with such indebtednesses (hereinafter, "credit disability insurance"). The Article is the Standard Credit Life and Credit Disability Policy Forms regulations that implement the system of mandatory standard credit life and disability insurance policy forms required by Insurance Code § 779.27.

### **AUTHORITY AND REFERENCE**

The regulations to be changed were adopted pursuant to the authority granted to the Commissioner of Insurance by Insurance Code §§ 779.21 and 779.27. The regulation provisions to be amended implement, interpret and make specific the provisions of §§ 779.2, 779.3, 779.4, 779.7, 779.8, 779.27, Ins. C.; §§ 18290, 18291, 18292, 22314, 22315, 22455, Fin. C.; Erreca v. Western States Life Insurance Co. (1942) 19 Cal.2d 388, and Moore v. American United Life Insurance Co. (1984), 150 Cal. App.3d 610.

### **PUBLIC HEARING**

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the amended regulations, as follows:

**Date and time:** February 7, 2008 at 1:00 p.m.

**Location:** 45 Fremont Street

**Hearing Room, 22nd Floor**

**San Francisco, CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted or 5:00 p.m., whichever is earlier. Note that written comments received before or during the hearing will be given the same weight in the rule-making process as oral testimony, if any, received at the hearing.

### **PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS**

All persons are invited to submit written comments on the proposed amendments during the public comment period. The public comment period will end at 5:00 p.m. on February 7, 2008. Please direct all written comments to the following contact person:

Peter Groom, Senior Counsel  
California Department of Insurance  
45 Fremont Street  
San Francisco, CA 94105  
Telephone: (415) 538-4421  
E-mail: [groomp@insurance.ca.gov](mailto:groomp@insurance.ca.gov)

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be addressed to the following backup contact person:

George Teekell, Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4390

#### **DEADLINE FOR WRITTEN COMMENTS**

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on February 7, 2008. Any written materials received after that time will not be considered.

#### **COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [groomp@insurance.ca.gov](mailto:groomp@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Peter Groom, Senior Counsel, and sent to the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

#### **INFORMATIVE DIGEST**

##### **Summary of Existing Law and Policy Statement Overview**

Credit disability insurance policy forms are subject to special laws and regulations set forth in the Insurance Code and in Article 6.9 of Title 10, California Code of Regulations, Chapter 5, Subchapter 2. Article 6.9 (§§ 2249.1 – 2249.16) implements the system of mandatory standard credit life and disability insurance policy forms required by Ins. C. § 779.27. Insurers must use the standard forms when possible and they need not be approved by the Department before use. The system also provides for “non-standard” forms that must be approved by the Department following rules in the regulation.

Among other things, the regulations establish a standard “Definition of Total Disability” (§ 2249.12, paragraph PG 1) which is used to determine whether a disabled debtor qualifies for benefits under the Total Disability Insurance Benefit provision (if any) in a credit insurance certificate subject to the regulations. Section 2249.9 specifies the text blocks

that comprise the standard certificates and the Notices of Proposed Insurance used with them. Section 2249 sets forth the credit insurance policy forms that must be approved by the Department before their issuance. Section 2215 prescribes dates by which credit insurance policy forms must have been brought into compliance with the original regulations and with the regulations as they were amended in 2006.

The basic policy of this rulemaking action is to make the existing standard Definition of Total Disability provision in the regulations more reflective of California case law. This rulemaking action would also correct an unrelated error in the existing regulations pertaining to the contents of the standard Identification Number 11 Notice of Proposed Insurance. It would also make technical changes relating to both matters.

### **Effect of Proposed Action**

The effect of the proposed action would be that debtors insured for disability under policies and certificates subject to Article 6.9 would be provided with more specific details than currently provided, of the extent to which they must be disabled in order to receive benefits under their insurance coverage. Insurers would also be able to rely on the Definition of Total Disability printed in their forms in administering disability claims, which currently, they cannot. The disability coverages would not change, however, because California case law already requires insurers to follow the criteria reflected in the new language.

The following is a summary of the changes proposed in this rulemaking action.

1. Make more specific the “Definition of Total Disability.” Existing regulations provide for a standard “Definition of Total Disability,” for use in credit insurance policy forms covering total disability. That definition only generally reflects current California case law on what constitutes “total disability” in insurance policies. The definition would be amended to better reflect the case law. (Title 10, Cal Code of Regs § 2249.12, paragraph PG 1.)
2. Correct Error in List of Block Number Section. Existing regulations call for an opening paragraph in the standard Notice of Proposed Insurance for ID #11 life and disability insurance policy forms that refers only to life insurance. The regulations would be amended to call for such a paragraph that refers also to disability insurance. (Title 10, Cal Code of Regs § 2249.9, paragraph #11.)
3. Waive Re-filing of Changed Policy Forms. Existing regulations require that credit policy forms that do not conform to the standard forms provisions must be approved before they are used. The regulations would be amended to waive the re-filing of such forms that have been changed only to reflect the amendments made by this rule-making action. (Title 10, Cal Code of Regs § 2249.2.)
4. Amend Compliance Date. Existing regulations prescribe a time by which forms subject thereto must comply with the regulations as they were amended in 2006. The regulations would be amended to similarly provide for a time by which such policy forms must comply with the amendments made by this rule-making action. (Title 10, Cal Code of Regs § 2249.15.)

### **COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the existing or proposed amended regulations.

#### **LOCAL MANDATE**

The Commissioner has determined that the proposed amended regulations would not impose any policy or expenditure mandate on local agencies or school districts.

#### **FISCAL IMPACT ON STATE OR LOCAL GOVERNMENT AGENCIES**

The Commissioner has determined that the proposed amended regulations would result in no cost or savings to any state agency, no cost to any local agency or school district that would be required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

#### **EFFECT ON HOUSING COSTS**

The Commissioner has determined that the matters proposed herein would have no significant effect on housing costs.

#### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE**

The Commissioner has made an initial determination that the proposed amendments would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Commissioner has made an initial determination that the proposed amendments would potentially affect 21 California-licensed disability insurers who, in 2007, reported themselves as being active in the California insurance market subject to the regulations. (There were over 900 insurers licensed for disability insurance in California in 2007.) The insurers that issue credit insurance policies and certificates subject to the regulations that provide disability coverage would have to reprint those documents to include the amended Definition of Total Disability. The impact on individual insurers would depend upon the extent to which they provide disability coverage (some credit insurance products provide only life insurance), how often they reprint their forms in the normal course of business, whether they print supplies of their forms in advance or whether they print them “as needed” from an electronic database, etc. We understand that, in general, policy form drafting and printing costs do not comprise a significant portion of credit disability insurers’ operating expenses.

The Commissioner has made an initial determination that the proposed amendments would also potentially affect creditors, insurance administrators and insurance producers that distribute credit insurance policy forms covering disability to debtors. These entities would have to distribute the revised policy forms throughout their operations and ensure that the proper forms were supplied to their customers. We understand that, in general, policy form distribution costs do not comprise a significant portion of these entities’ operating expenses. Note that the proposed amendments would not affect individual policies and certificates that were delivered to debtors before the date of mandatory compliance with the amendments.

The Commissioner has made an initial determination that the proposed amendments to Article 6.9 would not affect the ability of California businesses to compete with businesses in other states.

The Commissioner has attempted to lessen any adverse economic impact on the insurance industry by setting a reasonable phase-in period for compliance with the amendments. This would allow affected entities to exhaust existing supplies of policy forms and to update their policy forms on a routine basis. The Commissioner also proposes to waive the refiling of previously-approved non-standard policy forms that are changed solely to reflect the amended provisions. Nevertheless, the Commissioner invites interested parties to submit proposals for lessening any adverse economic impact on business. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

#### **ASSESSMENT REGARDING THE EFFECT ON JOBS AND BUSINESSES**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. The Commissioner has made an initial determination that the proposed amendments would not affect the creation or elimination of jobs within California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California.

#### **COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS**

The Commissioner is aware that the proposed amendments will likely cause insurers to incur unquantifiable expenses to revise and reprint many of their existing forms, as noted above. There may be unquantifiable cost impacts on those creditors, insurance administrators and insurance producers that distribute policy forms to debtors who seek credit disability insurance after the effective date of the amendments. These entities would have to distribute the new forms throughout their operations and ensure that they were properly supplied to their customers, as noted above. The Commissioner is not aware of any cost impacts that representative private persons or businesses, other than the businesses identified above, would necessarily incur in reasonable compliance with the proposed amendments.

#### **SMALL BUSINESS**

The Commissioner has determined that the proposed amendments would affect only those small businesses that distribute or market credit disability insurance to their customers. Such business would have to take steps to ensure that they used the proper, updated policy forms as supplied by the insurers. The costs of that impact are unquantifiable.

Insurers are not small businesses pursuant to Government Code § 11342.610(b)(2).

## **ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the amended regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. One alternative would be not to amend the regulations as proposed, so that insurers would have to develop on their own appropriate definitions of total disability and file or refile for approval, every credit policy form that contained a total disability benefit. The only other alternative would be to allow insurers to continue using the existing inadequate definition of total disability and hope that insurers would apply the case law in their claims administration. This alternative would deny to insureds an adequate explanation of the standards that the insurers would use in administering their disability claims. The Commissioner is aware of no other reasonable alternative to the proposed amendments that would be less burdensome on the entities subject to the regulations. The Commissioner invites public comment on alternatives to the regulations.

## **FINDING OF NECESSITY**

The Commissioner finds that it is necessary for the welfare of the people of the state that the proposed amended regulations apply to businesses.

## **TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS**

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed amendments. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests to view the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests to view the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed amended regulations, the Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

## **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

## **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading, 'QUICK LINKS.' Under the heading for 'For Insurers', select 'Legal Information.' from the drop-down menu. When the 'INSURERS: LEGAL INFORMATION' screen

appears, click the bulleted item: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the link: 'Search for Proposed Regulations.' Then, when the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents by searching by the regulation File Number, REG-2007-00030. (You may also search for them by the rulemaking action caption, "Total Disability Definition in Standard Credit Policy Forms Regulations.") A list of the posted documents for this rule-making action will appear. Click on the desired document to view it. You may also download documents for printing.

#### **MODIFIED LANGUAGE**

If the regulations adopted by the Department differ from those that have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons may view and/or download the changed regulations from the Department website or request a copy of them prior to adoption from the contact person listed above.